

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-137651-11

Date:

December 22, 2011

Legend:

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

Sub7 =

Sub8 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Firm =

Investor A =

Investor B =

Dear :

This letter responds to your September 8, 2010, letter requesting that the Commissioner, pursuant to § 1.1502-75(b)(3) of the Income Tax Regulations (the “Regulations”), treat Sub3 through Sub8 (collectively the “Omitted Members”) as if they each had filed a Form 1122, for purposes of § 1.1502-75(h)(2), with the consolidated return filed by Parent for the taxable year ended on Date 4. The information submitted in the request and in later correspondence is summarized below.

Parent is a calendar year corporation that uses the accrual method of accounting and was incorporated on Date 1. Parent wholly owns all of the outstanding stock of Sub1. Sub1 owns all the outstanding stock of Sub2, and Sub2 owns, directly and

indirectly, all of the outstanding stock of the Omitted Members. Sub2 also owns stock in several other entities.

Prior to Date 3, Parent and Sub1 were Subchapter S Corporations. Each was owned by shareholders of Parent. On Date 3, Parent acquired all of the stock of Sub1 from Parent's shareholders in exchange for the shareholder's receipt of additional Parent company common stock. On Date 3, Parent issued a second class of stock to each of Investor A and Investor B in exchange for cash. As a result, Parent's election to be treated as a Subchapter S corporation terminated effective Date 2 (the date before Date 3) and each of the elections treating the subsidiaries as Qualified Subchapter S subsidiaries also terminated.

Parent engaged Firm to prepare its initial consolidated Federal income tax return for the taxable year ended Date 4. The return for the taxable year ended Date 4 included the income and deductions of Parent for the full year and the income and deductions of Sub1 and its subsidiaries for the short period from Date 3 through Date 4. The Form 851 (Affiliations Schedule) was also prepared but did not include the Omitted Members.

On or about Date 5 (a date after Date 4), it was discovered that Form 1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Return) for each of the Omitted Members was not filed with Parent's tax return for the tax year ended on Date 4. The Omitted Members were mistakenly treated as disregarded entities. Upon discovery that the Omitted Members were includable corporations, Parent filed this letter ruling request.

REPRESENTATIONS

Parent has made the following representations:

1. The income and deductions of each of the Omitted Members for the taxable year ending on Date 4, and all taxable years thereafter, were included in the returns filed by Parent as parent of the consolidated group.
2. A separate federal income tax return was not filed by the Omitted Members or any other member of the Parent group for the taxable year ended Date 4.
3. Except for the failure to timely file Forms 1122, Parent and its subsidiaries, including the Omitted Members, were eligible to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ended Date 4.
4. Parent and its subsidiaries would have validly elected to file a consolidated return for the year ended Date 4, and failed to do so only based on a mistake of fact.

5. As of the date of taxpayers' request for relief, the Internal Revenue Service has not notified Parent or its subsidiaries of the failure to file Forms 1122 with the consolidated Federal income tax return for the taxable year ended Date 4.
6. For the taxable years ended after Date 4, all of the members of the Parent group will be included on the Form 851 Affiliations Schedule attached to the consolidated Federal income tax returns filed by the Parent group.

LAW

Section 1.1502-75(a)(1) of the Regulations provides that a group that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents to the Regulations under section 1502.

Section 1.1502-75(b)(1) of the Regulations provides that the consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2) of the Regulations.

Section 1.1502-75(h)(2) of the Regulations provides that, if under the provisions of § 1.1502-75(a)(1) of the Regulations, a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(3) of the Regulations provides that, if any member has failed to join in the making of a consolidated return, then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2) of the Regulations, and thus joined in the making of the consolidated return for such year.

RULING

Based solely on the facts and information submitted, we rule that Parent has established to the satisfaction of the Commissioner that due to a mistake of fact it

excluded the Omitted Members in making its consolidated return for the year ended Date 4. The Omitted Members shall be treated as if they had filed Forms 1122 for such year for purposes of § 1.1502-75(h)(2) of the Regulations, and thus joined in the making of the consolidated return for such year (§ 1.1502-75(b)(3)).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Marie C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
Associate Chief Counsel (Corporate)